Single Bench

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 79 of 2006

APPELLANT/PLAINTIFF :- Bharat Ram Sahu son of Santosh Sahu, aged about 50 years, Occupation - Service/Teacher R/o Chhattisgarh Nagar, Jhanda Chowk, Tikrapara, Raipur (C.G.).

VERSUS

RESPONDENTS/DEFENDANTS :-

1) Salik son of Nakul Rawat, aged about 60 years, R/o village Ghot, Post Nawagaon, Via- Nayapara Rajim, Tah. Abhanpur, District Raipur (C.G.).

2) Munna Rawat son of Bisalik Rawat, aged about 27 years, R/o village Paudi, Post Chapajhar, District Raipur (C.G.).

3) Sahdev son of Bisalik Rawat, aged about 27 years, R/o. village Paudi, Post Chapajhar, District Raipur (C.G.).

4) Jagdev son of late Bisalik Rawat, aged about 22 years, R/o. village Paudi, Post Chapajhar, District Raipur (C.G.).

5) Lata Bai wife of Netu Rawat, R/o Binauri, Post Basin, Via- Rajim, District Raipur (C.G.).

6) Savita wife ofNarottam Rawat, R/o village Abhseoni, District Raipur (C.G.).

7) Smt. Johni Bai widow of late Bisalik Rawat, aged about 48 years, R/o village Jodi, Distt. Raipur (C.G.).

P.R. No. 4/67 Lab. Presented by Shri M.K. Bhadauria dated 9/2/06

5

8. Ku. Savitri D/o late Bisalik, aged about 14 years, R/o village Paudi, District Raipur (C.G.) Through- Legal representative and next friend Johni Bai. Both R/o village Jaundi.

SECOND APPEAL UNDER SECTION 100 OF CIVIL PROCEDURE CODE

APPEAL VALUED AT Rs. 3400/-

A/ER

(18)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO.79 OF 2006

Bharat Ram Sahu

Vs.

Salik and others

Appearance:

Shri M.K. Bhaduri, Counsel for the appellant.

ORAL ORDER
31.08.2006

Sunil Kumar Sinha, J.

(1) This is the plaintiff's Second Appeal filed under Section 100 of the Code of Civil Procedure. The plaintiff lost in both the Courts. This appeal arises out of the judgment and decree dated 29/11/2005 passed by the VIII Additional District Judge (FTC), Raipur (C.G.) in Civil Appeal No.8-A/2004 arising out of judgment and decree dated 28/7/2000 passed in Civil Suit No.9-A/97 by the VII Civil Judge Class-II, Raipur (C.G.).

(2) The brief facts are that the plaintiff filed a suit for specific performance of an agreement dated 3/7/1988 (Ex.P-1) alleged to have been executed by defendants No.1 and 2 and their mother Smt. Kachhra Bai. The plaint allegations are that these persons entered into an agreement to sale of certain agricultural land situated at village – Joundi, P.C. No.154, Tehsil – Rajim, District – Raipur (C.G.) for a consideration of Rs.3000/-. Since after many requests made by the plaintiff, the defendants No.1 & 2 did not execute the sale-deed pertaining to the aforesaid agreement, the plaintiff was constrained to file the instant suit for the specific performance.

(19)

(3) A written statement was filed denying the contentions of the plaintiff. The factum of execution of the agreement was denied by the defendants.

(4) The learned trial Court framed various issues in this case and after recording evidence of the parties dismissed the suit of the plaintiff on two grounds. It was held that the plaintiff could not prove that such an agreement was executed by the defendants. It was also held that the suit of the plaintiff, which was filed for specific performance of an agreement dated 3/7/1988 on 14/9/1997 was barred by limitation.

(5) Against the aforesaid judgment and decree passed by the trial Court, the plaintiff filed an appeal before the Lower Appellate Court. The Lower Appellate Court also dismissed the appeal, confirming the judgment and decree passed by the trial Court.

(6) Learned counsel for the appellant argues that the trial Court as well as the First Appellate Court erred in law in holding that that the plaintiff could not establish the valid execution of the agreement dated 3/7/1988 (Ex.P-1). He also argues that the finding in relation to limitation is not in accordance with law.

(7) In the Book of *Pomeroy on Specific Performance of Contracts (3rd Edn.), (para 159)*, a quotation pertaining to the said subject is made as follows :

> " a greater amount or degree of certainty is required in the terms of an agreement, which is to be specifically executed in equity, than is necessary in a contract which is to be the basis of an action at law for damages. An action at law is founded upon the mere non-performance by the defendant, and this negative conclusion can often be established without determining all the terms of the agreement with exactness. The suit in equity is wholly an affirmative proceeding. The mere fact of non-performance is not enough; its object is to procure a performance by the defendant, and this demands a clear, definite and precise understanding of all the terms; they must be exactly ascertained

before their performance can be enforced. This quality of certainty can best be illustrated by examples selected from the decided cases..."

Reference be seen in ***(1998) 5 SCC 381 - Ganesh Shet - vs- Dr.C.S.G.K. Setty and others.***

(8) In ***JT 2006 (2) SC 228 – H.P. Pyareian – vs- Dasappa (dead) by L.Rs. and others***, it has been held by the Apex Court that the basic principle behind section 16 (c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

(9) It is clear from the aforesaid judgments that the relief for specific performance is a discretionary relief and is not given merely because it is legal but it is governed by sound judicial principles. The circumstances referred to in sub-section (2) to (4) of Section 20 of the Specific Relief Act, in regard to exercise of discretion for granting a decree for specific performance are not exhaustive. In a suit for specific performance, the evidence and proof of the agreement must be established, clear and certain. While normally, it is permissible to grant relief on the basis of what emerges from evidence – even if not pleaded, provided there is no prejudice to the opposite party, such a principle is not applied in suits relating to specific performance.

(Emphasis supplied).

(10) In the case on hand, it appears after perusal of the said agreement (Ex.-P-1) and also after perusal of the evidence of PW-3 and PW-4, who are the witnesses to the agreement, that the agreement itself suffers with many legal deformities. The trial Court has pointed out that this agreement, which is written on a stamp paper and is endorsed to be purchased on 4/12/1987 has got manipulations in the column of endorsement to be made by the vendor. In the last column after using

(21)

whitener (eraser) in overwriting, the word – "*Ekrarnama*" has been mentioned. Not only this, at place B to B of the said document, "जमीन की बिक्री कीमत ३०००.०० रूपये है" also appears to be an insertion afterwards and on this evidence, the trial Court and the First Appellate Court have held that the valid execution of the agreement was not proved.

(11) This finding of fact about the validity of the execution of the agreement has been recorded by the two Courts below. There appears to no perversity in the aforesaid finding recorded by the said Courts and that cannot be disturbed in this appeal.

(12) So far as the point of limitation is concerned, since the factum of execution of agreement has not been found to be established by the two Courts below and I have also taken the view that the finding recorded by the two Courts, in this regard, are not required to be interfered with in this Second Appeal, I am not required to go into the question of limitation because such an exercise would be redundant in view of what has been stated above.

(13) In the opinion of this Court, the appeal involves no substantial question of law for consideration under Section 100 of the Code of Civil Procedure and the same is dismissed at the motion stage itself.

Sd/-
Sunil Kumar Sinha
Judge

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